HIRSCHBERG & FRIEDMAN, LLP

4500 PARK GRANADA, SUITE 202
CALABASAS, CALIFORNIA 91302-1613

LESLIE D. HIRSCHBERG — EMAIL ldhesq@hfllp.com — TELEPHONE (818) 225-9593
MICHAEL N. FRIEDMAN* — EMAIL mnfesq@hfllp.com — FACSIMILE (818) 225-9593

*LICENSED TO PRACTICE IN CALIFORNIA & OREGON

April 8, 2024

VIA EMAIL ONLY - kim.dawson@edcgov.us

El Dorado County Board of Supervisors
c/o Ms. Kim Dawson, Clerk of the Board
330 Fair Lane, Building A
Placerville, CA 95667

Re: Atkins (Variance V23-0001) - Appeal to El Dorado County Board of Supervisors
1627 Player Court, South Lake Tahoe CA 96150

Dear Supervisors:

This office represents Peter and Cheryl Lee ("Lees"), owners of the residence at 1625 Player Court, South Lake Tahoe, CA 96150, the property immediately adjacent to the west of 1627 Player Court, the site of the proposed development ("subject property"), in connection with the Lees' appeal of the decision of the El Dorado County Planning Commission to approve a variance to reduce the required 20-foot front yard setback to only 5 feet in order to allow construction of a 27-foot high garage and second story accessory dwelling unit ("ADU").

Executive Summary

A variance from El Dorado County's zoning laws is not a discretionary approval. State law controls when a variance may be allowed. It ***requires*** the Board to make certain factual findings, which facts must be supported by ***substantial evidence*** contained in the files of the Regional Planning Department. El Dorado County adopted County Code §130.52.070 to implement state law mandates and subsection (D) contains the mandatory factual findings required to approve a variance.

While the applicant proposes a single two-story structure, the structure proposes two separate uses – a garage and a second-story ADU. County Code §130.52.300 sets forth the requirements for an ADU and, to be allowed within a front yard setback, requires a separate variance for the ADU with separate mandatory findings. The Planning

Commission's approval failed to make any findings with respect to the ADU. Therefore, its approval of a variance for the ADU was unlawful.

Neither a variance for the garage nor a variance for the ADU can be lawfully approved by the Board because required findings cannot be supported by substantial evidence in the administrative record. As will be discussed in further detail below, (1) the shape of the lot, while irregular, does not cause the applicant to be unable to use his property any differently than any other property owner in the vicinity; (2) while State law allows an ADU to be constructed as a matter of right, the applicant is not entitled to either a garage or ADU if his house is already so large for the lot it is built on that it occupies virtually all of the maximum allowable lot coverage and accessory structures can only be built with variances to place those structures in setbacks that obviously minimize lot coverage by reducing driveway length; (3) the front yard setback on each property in the subject cul-de-sac is for the benefit of neighboring property owners and a 75% reduction in the front yard setback of the applicant's property is an ***enormous*** deviation from neighborhood standards and, if approved, would be the only lot in the cul-de-sac and surrounding neighborhood that has the special privilege of allowing a massive two-story structure within the uniform 20-foot front yard set back; and (4) based upon the expert opinions of the Lees' architect and structural engineer, whose letters are submitted herewith, the proposed development, as currently designed and sited, creates adverse impacts to the Lees, to other neighbors in the cul-de-sac and to the environment relating to drainage, traffic, privacy and viewshed, all of which could have been mitigated by conditions which the Planning Commission could have but failed to adopt.

1. The Board Cannot Approve the Subject Variance Application Because the State-Mandated Factual Findings, Supported by Substantial Evidence Cannot Be Made

California Government Code §65906 provides in relevant part:

> "Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.
>
> Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special

> privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated."

El Dorado County adopted §130.52.070 of its Zoning Ordinance in order to implement the foregoing Government Code provision. At subsection (A), it similarly provides:

> "This Section describes the process for County consideration of requests to modify certain standards of this Title (Title 130, Zoning Ordinance) when, because of special circumstances applicable to the property, including location, shape, size, surroundings, topography, or other physical features, the strict application of the development standards for the zone denies the property owner rights enjoyed by other property owners in the vicinity and in the same zone."

Subsection (D) states: "A Variance shall be granted by the review authority only where all of the following circumstances are found to apply:

1. There are special circumstances or exceptional characteristics or conditions relating to the land, building, or use referred to in the application, which circumstances or conditions do not apply generally to land, buildings, or uses in the vicinity and the same zone;

2. The strict application of the zoning regulations as they apply to the subject property would deprive the subject property of the privileges enjoyed by other property in the vicinity and the same zone (California Government Code Section 65906);

3. A variance granted shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated (California Government Code Section 65906); and

4. The granting of the Variance is compatible with the maps, objectives, policies, programs, and general land uses specified in the General Plan and any applicable specific plan, and not detrimental to the public health, safety, and welfare or injurious to the neighborhood."

Before addressing these specified findings in relation to the proposed development, it is important to acknowledge some of the more important rules relating to an application for a variance. "A zoning scheme, after all, is similar in some respects to a contract; each party forgoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. . . If the interest of these parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 517-518; *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 923)

As a result, "a reviewing court, before sustaining the grant of a variance, must scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision." *Stolman*, *supra*, at 922. "Substantial evidence" consists of 'fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.' *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 410. It does not consist of 'argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.' *Ibid.*

Lastly, in making its decision on this appeal, the Board must fully explain how it arrived at its conclusion starting with the raw evidence in support of or opposition to the application and explaining how that evidence supports or does not support the required findings. The California Supreme Court explained:

> "We further conclude that implicit in section 1094.5 [the administrative mandate statute] is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. If the Legislature had desired otherwise, it could have declared as a possible basis for issuing mandamus the absence of substantial evidence to support the administrative agency's action. By focusing, instead, upon the relationships between evidence and findings and between findings and ultimate action, the Legislature sought to direct the reviewing court's attention to the analytic route the administrative agency traveled from evidence to action. In so doing, we believe that the Legislature must have contemplated that the agency would reveal this route. Reference, in section 1094.5, to the reviewing court's duty to compare the evidence and ultimate decision to 'the findings'

> (emphasis added) we believe leaves no room for the conclusion that the Legislature would have been content to have a reviewing court speculate as to the administrative agency's basis for decision." *Topanga, supra,* at 841.

With these important principles in mind, the Lees ask the Board to consider their arguments in support of their appeal of the Planning Commission's approval of the subject variance.

2. The Planning Commission Failed to Make Any Specific Findings in Support of the Request to Place An ADU in a Front Yard Setback

The El Dorado County Zoning Ordinance, at §130.40.300(C)(2)(a) relevantly states that "[a]n accessory dwelling unit shall conform to the parking, height, setback, landscape, architectural review, maximum size of a unit as described in this Title . . . Accessory dwelling units may be . . . detached from the . . . existing primary dwelling . . . and located on the same lot as the . . . existing primary dwelling. . . A setback more than four feet from the side and rear lot lines shall not be required for an accessory dwelling unit, unless otherwise required for fire and safety, public utility or drainage easements, or other recorded easements."

Because El Dorado County's Zoning Ordinance contains a separate requirement that an ADU comply with all of the ordinance's development standards applicable to the property on which it is located, the Lees submit that the applicant was required to submit a separate variance request for each intended use (i.e. garage and accessory dwelling) and that separate findings were required for each variance request. No automatic assumption could be made that, just because the ADU is planned to be constructed above the garage, that a variance for both intended uses is supported.

Presently, only 2 of 5 lots in this cul-de-sac have a garage. However, the applicant's property is the only one in the cul-de-sac that already has four bedrooms. The ADU will constitute a fifth bedroom, 2 more than any other house in the cul-de-sac. While the Planning Department considered the number of lots with garages, it did not give similar consideration to the need for an ADU in a front yard setback.[1]

---

[1]This is particularly significant because the Lees stated at the last hearing before the Planning Commission that they would not oppose the variance for the applicant's garage if it did not also have an ADU above it. The Planning Commission acknowledged the significance of this but ultimately voted per staff recommendation to approve both the garage and the ADU in the front yard setback because the Lees were not the sole project

The Planning Commission's findings make no mention of the ADU. The staff report provides no factual analysis to justify putting an ADU in the 20 foot front yard setback. There is no substantial evidence supporting the required findings with respect to the ADU and the Planning Commission's decision is not supported by any findings related to the ADU. Accordingly, the Planning Commission's decision does not comply with El Dorado County's Zoning Ordinance and should not be adopted by the Board.

3. The Planning Commission's Findings in Support of the Requested Variance are Not Supported by Substantial Evidence

A. There are No Extraordinary Circumstances Related to the Applicant's Property That Justify a 75% Decrease in the Required Front Yard Setback

While the Planning Department's staff report discusses the irregular shape of the subject property, the shape of the property was ***not*** a basis for the finding of extraordinary circumstances. The purported extraordinary circumstances are that (1) the subject property is subject to the TRPA Code of Ordinances; and (2) a Stream Environmental Zone ("SEZ") is located on the property and development is required to be set back 10 feet from the SEZ. Neither of these circumstances are extraordinary and neither of them justify the granting of a variance.

All of the properties on Player Court are subject to the TRPA lot coverage limits. There is nothing extraordinary about that. While there is an SEZ running along the eastern side of the subject property and a 10-foot setback associated with it, neither the SEZ nor the setback therefrom create the need for the requested variance. The fact is that the subject property is, by far, the smallest lot on the cul-de-sac and, if approved, will have the most developed square footage. Table 1 below compares the subject property's lot size and developed square footage with the 4 other lots in the cul-de-sac.

---

opponents. (Neighbors on both sides of the subject property and across the street also opposed the proposed development.) The logic behind the Planning Commission's decision, that no concessions or accommodations should be made to the Lees because doing so would not eliminate all neighborhood opposition to the proposed development, is highly questionable given the evidence of adverse impacts of the ADU to the Lees, particularly in hindsight since the Lees were the only persons to appeal the Planning Commission's decision.

TABLE 1*

Property Address	Lot Size	Developed Square Footage	Floor Area Ratio
1625 Player Court	9,551	2,309	24.18%
1627 Player Court**	7,405	1,639 + 880[+] = 2,519	34.02%
1632 Player Court	12,197	1,152	9.44%
1633 Player Court	10,019	1,515	15.12%
1595 Player Drive	12,197	1,280	10.49%

* Data obtained from online Redfin Listing for each property
** Applicant's Property
[+] Existing Development + Proposed Development

Table 1 clearly demonstrates the reason why the applicant needs a variance for the proposed development: It is the smallest lot on the cul-de-sac and it is already built-out with the only 4-bedroom house. The fact that the subject property is the smallest lot and has already been built-out to near-maximum capacity does not create extraordinary circumstances. To the contrary, a variance from setback requirements in this situation promotes mansionization and over-development inconsistent with the very purpose of zoning setbacks.

Moreover, the rationale stated for the extraordinary circumstances finding includes a factual representation that "the amount of land that can be covered is limited to 1,800 square feet. This factual representation is at least partially inaccurate and is misleading. Attached hereto as **Exhibit 1** is a true and correct copy of a letter from Jule Roll, Senior Planner at the TRPA, addressed to Joshua Atkins, the applicant, dated July 28, 2022. This letter states that the total base allowable coverage is only 1,581 square feet, not 1,800 square feet. Any additional lot coverage up to 1,800 square feet will require a transfer of development rights from an off-site parcel of land which has had its development rights extinguished. This development rights transfer is only available because the subject property is designated by the TRPA as a small lot. In other words, the applicant's lot size has already been given special treatment by the TRPA. A variance would be a second and wholly unjustified instance of special treatment due to the applicant's small lot size. Small lot size, after all, is not an exceptional circumstance, particularly where it exceeds the minimum lot size for the property's zone designation, i.e., 6,000 square feet. [See County Zoning Ordinance, Table 130.24.030.]

This is a clear case of over-development and, even if approved by the Board, cannot withstand judicial scrutiny of the applicable TRPA requirements and compliance with state law.

B. The Strict Application of the Front Yard Setback is Not the Cause of the Applicant's Inability to Lawfully Construct a Two-Story, 27-Foot High, 2-Car Garage and Upstairs ADU

The Planning Commission's Finding in paragraph 3.2 states, as its rationale, in relevant part, that (1) "Houses on either side of this parcel are developed with garages"; and (2) "Allowing the reduced front . . . setbacks for the addition of a garage would not affect adjoining properties." This rationale is wholly inadequate to support the required finding.

The Planning Commission failed to acknowledge that the garages on both sides of the subject property are attached to and a part of the principal residence. Neither property has a free-standing garage, much less an accessory dwelling unit above the garage. The applicant has the option of constructing or remodeling his residence to include a garage with living space above it without the necessity of a variance. The applicant has shown no great hardship or inability to comply with the zoning laws. It is merely his preference to add additional developed square footage beyond the capacity of his small lot – hardly a justification for a variance. Moreover, only 2 of the 5 lots on this cul-de-sac have garages.

The Lees, however, are not insensitive to the fact that the Planning Department has shown a preference for off-site covered parking in making its recommendation to the Planning Commission. Off-site covered parking, it can be argued, enhances public safety, reduces incidents of theft, and overall enhances the general welfare of the community. The preference for off-site covered parking, however, should not be manifested in variance approvals but rather in the adoption of ordinances based on the legitimate exercise of the County's police power. At a minimum, the County's legitimate exercise of its police power is a valid justification for the relaxation of lot coverage limits established by the TRPA.

Here, it is not the garage and ADU which would exceed the lot coverage limit absent a variance. Rather, it is the driveway leading to the garage that would create the excess lot coverage. Moving the garage/ADU into the front yard setback reduces the length of the driveway and therefore the lot coverage. However, the County has a legitimate basis, based upon the promotion of the health, safety and general welfare of the community to promote both uniform setbacks and the construction of off-site covered parking. A longer driveway, constructed with semi-permeable pavers, is a small price to pay, in terms of lot

coverage, for the goals of maintaining uniform setbacks in the community and promoting off-site covered parking.

The Lees urge the Board to avoid sacrificing uniform setbacks in order to accomplish off-site covered parking. It need only authorize the garage to be sited outside the front yard setback by allowing a minor increase in the lot coverage beyond the 1,800 square feet authorized for small lots.[2] A 17% increase in allowable lot coverage would avoid a 75% decrease in the front yard setback. It is clearly the lesser of two evils if the Board is determined to grant the variance on policy grounds.

With respect to the Planning Commission's finding that the construction of a two-story, 27-foot high, 2-car garage and ADU immediately adjacent to the Lees' residence "would not affect adjoining properties," the Lees are justifiably outraged. This finding, more than any other, prompted this appeal and future action which might result from its adoption by the Board.

The Lees objected to the size, bulk and location of the proposed development due to concerns regarding snow build-up, drainage, loss of privacy and loss of view of open space land. These concerns were addressed by the Planning Department in the most cursory way and did not require the applicant to offer evidence that the proposed development's impacts on adjoining properties would be minimal. Instead, the planner at the hearing offered unsupported conjecture and mischaracterizations of the law in an attempt to cover up the dearth of evidence in the record regarding adverse impacts to the neighboring properties.

It is important to note that, at the Planning Commission, it was not the burden of the Lees or their neighbors to prove that the proposed development would have adverse impacts on them and their properties. Rather, the burden at that stage was on the applicant to show that the proposed development would ***not*** create adverse impacts. The applicant provided no such evidence.

---

[2]The driveway, as proposed, is 183 square feet. If the garage were located outside the front yard setback, the driveway would be 489 square feet. If the driveway were constructed of semipermeable paver stones or similar semipermeable material, a 25% credit could be given, which, along with other lot coverage exemptions would reduce the effective driveway size to approximately 307 square feet. [See, T. Spiegel Lot Coverage Calculations Proposed and Alternate 1, **Exhibit 2** hereto.]

As a result, the planner presenting the staff report to the Planning Commission stated that snow on the sloped roof of the proposed development would not slide off the roof at the same angle as the roof's slope but would rather slowly drip off of edge of the roof straight down, where a small gravel-filled ditch was proposed as the sole source of drainage for the snow. There was no evidence from a qualified architect or engineer to support this opinion. It was based solely upon the planner's claimed observations of snow on the roof of his own home which may or may not have the same roof slope or roof area.

The Lees have their gas meter on the side of the house facing the proposed development. Snow build-up on that side of the house could have dangerous consequences if the gas shut-off valve had limited access due to snow build-up from the adjacent structure. Moreover, for no apparent reason, the roof has a single slope which faces the Lees' residence, thereby exacerbating both the height impact of the structure and its propensity to allow snow to slide off the roof into the Lees' side yard.

The Lees consulted with California licensed structural engineer Ramon Garcia, regarding the proposed development and he opines:

1. The roof of the proposed garage/ADU, slopes in one direction towards, and located near the neighbor's property at 1625 Player Court. Snow is intended to slide off, and can land a substantial distance from the roof edge.
2. There does not appear to be any consideration made for drainage of the additional snow that would be caused by the proposed garage/ ADU.
3. Because the building location, and roof configuration of the proposed garage/ADU, there is a potential for substantial, and even excessive snow mounds on the neighbor's property at 1625 Player Court.
4. With additional snow melt, and potentially low drainage on the neighbor's property, there is the potential of ponding of water, and subsequently over saturation of the soils. When some types of soils get oversaturated below footings, they can experience additional differential settlement. Excessive differential settlement can manifest itself in cracks in footings, and architectural finishes, and if the differential settlement is large enough over a short horizontal distance, could affect the structural performance of the building. [See, RGSE letter, dated March 27, 2024, **Exhibit 3** hereto]

Mr. Garcia recommended that a licensed engineer perform an analysis of the snow loads that slide off the roof and drainage issues that may result. It is frankly quite amazing to the Lees that a french drain was not required, at a minimum, since, according to the Lees' licensed architect/general contractor, Todd Spiegel, the natural slope of the terrain runs from west to east across the applicant's property, which would be directly underneath the proposed development, leading to the SEZ on the eastern side of the applicant's property. [See, T. Spiegel Letter dated April 5, 2024, **Exhibit 4** hereto.] The fact that the proposed development was not even evaluated by the Planning Department for its potential to alter the natural drainage course in the vicinity of the SEZ is a serious omission.

With respect to the Lees' privacy, it should be noted that the windows of the ADU face the Lees residence and, particularly, the master bedroom. The stairway and second-floor landing also provide close-up views into the Lees' residence. Currently, the view from the Lees' windows is presently unobstructed and allows them a view of the open space property located diagonally across the street from their residence. [See, 3-D images of proposed development and the adjoining Lee residence in the proper scale, **Exhibit 5** hereto. A link to a video demonstrating the enormity of the proposed accessory structure in relation to the Lees' residence can be downloaded here as **Exhibit 6** and will be provided to the Planner assigned to this appeal on a flash drive at the time of the hearing to be included in the administrative record:

View or Download Video

The planner at the hearing was quick to state that the Lees have no vested right to privacy or to a viewshed. That is true as to structures that are built in compliance with applicable law. But that legal proposition has no application to the state-mandated findings required for a variance. The issue is not whether the neighbors have a vested right to stop the proposed development but whether the proposed development adversely impacts neighboring properties. If adverse impacts are found, regardless of whether they are based on vested rights or not, the required finding for a variance cannot be made. County counsel offered no guidance on this point and, as a result, a legally-erroneous finding was made.

C. The Variance is Clearly the Grant of a Special Privilege – No One Else on the Block is Allowed to Build in Their Front Yard Setback

The Planning Department chose to cast this issue as whether it is a special privilege to have off-site covered parking and determined that it was not. The question, however, is not whether off-site covered parking should be allowed but whether locating it, along with a second story ADU, should be allowed in the uniform 20-foot setback. If off-site

covered parking is desirable from a public policy standpoint in the South Lake Tahoe community, it should be addressed by ordinance, not variances for individual applications.

As it stands, the subject property is the smallest lot on the cul-de-sac with the largest amount of developed square footage. The only reason that 1,800 square feet of coverage is allowed on the lot is because it has special status under the TRPA Ordinance as a small lot and can therefore qualify for transferred development credit. The subject property simply cannot support the amount of square footage of improvements proposed and the idea of putting the garage/ADU within 5-feet of the street in order to shorten the driveway and hence the lot coverage is a special dispensation on top of the special dispensation that allowed the 1,800 square feet of lot coverage in the first place. If the garage/ADU is going to be allowed at all, it should be located adjacent to the applicant's residence, not the Lee residence. If any variance is going to be allowed at all , it should be a lot coverage variance, not a front yard setback variance. If the garage must be located in the front yard setback, the second story ADU should not be allowed there because an ADU may only be constructed as a matter of right when it complies with all applicable development standards. The desirability alone of off-site covered parking by the applicant and/or the County does not justify the grant of a variance. It is a special privilege to build within a uniform setback and, given the number of times that the term "full-time resident" was used at the Planning Commission hearing, it is apparently reserved only for those who fit that description.

D. The Variance is a Significant Breach of the Uniformity of Front Yard Setbacks in the Vicinity and is Injurious to the Neighborhood

The variance approved by the Planning Commission is a 75% reduction of the legal requirement. A 20-foot setback is not a huge or unreasonable setback from the street. It creates a uniform neighborhood where each neighbor has a diagonal view from their residences to the street. This is not only a scenic view but one that is important to public safety, such as when a loud noise is heard coming from the street. If an auto collision or fire occurs on Player Court, residents there should be able to look out their windows to the street to see what is happening. If a resident is backing out of their property in their car, their view should not be obstructed by structural improvements located within the front yard setback. The proposed development blocks the Lees' view of what is happening in the neighborhood and blocks the view of the residents of 1632 and 1633 Player Court of seeing an incident at the intersection of Player Court and Player Drive, or oncoming traffic entering Player Court because their residences and driveways are set back from the street.

Moreover, the lack of uniformity of a front yard setback can lead to resentment among neighbors which disturbs public harmony. This is not mere speculation. Neighbor disputes frequently arise when one neighbor places something in his/her front yard that imposes on his/her other neighbors. Neighbor disputes often lead to incidents of property damage and worse. Here, neighbors on each side of the subject property and directly across the street from it all opposed the proposed development. It is ill-advised to disregard the uniformity of opposition to this project.

Uniformity of zoning requirements encourages neighborhood harmony. This is the fundamental reason why zoning variances are discouraged and only granted in extraordinary situations. This is far from an extraordinary situation. This is the implementation of a policy favoring off-street covered parking on a lot-by-lot basis rather than the implementation of an ordinance that allows equal opportunity for property development and equal property rights.

4. Conclusion

A variance is a zoning mechanism that is ill-suited to development projects that are favored by a local agency but lack the requisite extraordinary circumstances to justify an exception to uniform zoning laws applicable to the general public and, particularly, to properties in the immediate vicinity of the subject property. It is very apparent from the record that this project was favored by the Planning Department and the Planning Commission but that it lacks any legally recognizable circumstances that rise to the level of extraordinary. Moreover, there is nothing in the record to suggest that the applicant could not design a project that would provide off-site covered parking without the necessity of a variance, or that doing so would inflict any legally significant hardship on him.

Neither the Planning Commission nor the Board has the discretion to make findings that are not supported by substantial evidence in the record just because they favor the proposed development. Both the Board and the applicant have options that can facilitate the desired off-site covered parking without forcing this dispute to persist and/or escalate. The Lees have always expressed a willingness to work with the applicant. Whether it is a neighborly compromise or a decision which has actual evidentiary support is of no consequence. The important thing is that the public interest and the interests of all affected property owners be taken into account and that the interests of any one stakeholder not be cast aside in the name of politics or expediency.

I will be present at the public hearing to present the Lees' appeal and to answer any questions you may have. Thank you for your consideration.

Very truly yours,

HIRSCHBERG & FRIEDMAN, LLP

MICHAEL N. FRIEDMAN

Attachments

cc: Mr. John Hidahl - bosone@edcgov.us
Mr. George Turnboo - bostwo@edcgov.us
Ms. Wendy Thomas - bosthree@edcgov.us
Ms. Lori Parlin - bosfour@edcgov.us
Ms. Brooke Laine - bosfive@edcgov.us

EXHIBIT 1

TAHOE REGIONAL PLANNING AGENCY

Mail
PO Box 5310
Stateline, NV 89449-5310

Location
128 Market Street
Stateline, NV 89449

Contact
Phone: 775-588-4547
Fax: 775-588-4527
www.trpa.gov

July 28, 2022

Joshua Atkins
1627 Player Ct.
South Lake Tahoe, CA 96150

LAND CAPABILITY VERIFICATION, 1627 PLAYER COURT, EL DORADO COUNTY, CALIFORNIA
APN 081-132-003, TRPA FILE NUMBER LCAP2022-0067

Dear Mr. Atkins:

Tahoe Regional Planning Agency (TRPA) staff recently completed a Land Capability Verification on the subject parcel and now recognizes the following:

Land Capability District	Percent Coverage	Area (sq. ft.)	Base Allowable Coverage (sq. ft.)
Class 1b	1%	1,299	13
Class 5	25%	6,273	1,568
Total		7,572	1,581

Thank you for your attention to this matter. If you have any questions, please contact me by phone at (775) 589-5247 or by e-mail at jroll@trpa.gov.

Sincerely,

Julie Roll

Julie Roll
Senior Planner
Current Planning Department

EXHIBIT 2

MAX. ALLOWED COVERAGE PER EDC SITE ASSESSMENT (9/23/2007): 1,655 SF/1,670 SF*	SQUARE FOOTAGE BASED ON SURVEY		VERIFIED/APPROVED COVERAGE BY LAND CLASS BASED ON LCAP2022-0067				APPROVED COVERAGE BY LAND CLASS AFTER EDC PERMIT 202644				EXISTING COVERAGE PER JULY 2022 INSITE SURVEY	EXISTING COVERAGE JULY 2022 BY LAND TYPE				PROPOSED COVERAGE BEFORE EXEMPTIONS				COVERAGE EXEMPTIONS		PROPOSED COVERAGE
			1B	LC 5			1B	LC 5				1B	LC 5			1B	LC 5			Actual exemption	Credited Exemption**	
	SEZ SETBACK	5		SEZ SETBACK	5	TOTAL LC5		SEZ SETBACK	5	TOTAL LC5			SEZ SETBACK	5	TOTAL LC5		SEZ SETBACK	5	TOTAL LC5	(Max. allowed: 627 SF)	(Max. allowed: 627 SF)	TOTAL
AC DRIVEWAY & WALKWAY	6	189		78	483	561		78	483	561	519		78	441	519		7	189	196	47	189	149
(P) PATH FROM GARAGE TO DECK AND LANDING		59																51	51	13	51	38
GARAGE		438																440	440			440
RESIDENCE*	327	785		320	764	1,084		319	764	1,083	1,083		319	764	1,083		319	764	1,083			1,083
WOOD DECKS W/3:1	63	125									218	3	100	115	218		60	115	175	115	115	60
WOOD STAIRS ON GARAGE		54																54	54	54	54	0
STEPS				4	9	13		6	19	25	14		5	9	14				9	9	9	0
PREVIOUS WALKWAY TO FRONT DECK + STEP (VERIFIED) [WHERE COVERAGE IS NOT COUNTED WITH DRIVEWAY COVERAGE]								49														
A/C WALKWAY UNDER DECK											3		3		3		0		0			0
PAVERS											9			9	9		0		0			0
SHED		125									137			137	137			137	137	120	120	17
BEAR BOX^											5			5	5			0	0			0
SETBACK COVERAGE TRANSFERRED TO LC 5																	4					
BANKED COVERAGE^^						12											2					3
TOTAL COVERAGE	396	1,775	0	402	1,256	1,658	0	452	1,266	1,718	1,988	3	505	1,480	1,988		392	1,750	2,145	358	538	1,790
NEW COVERAGE SEZ SETBACK SUBJECT TO RETIREMENT																	20					
RETIRED COVERAGE (SETBACK)																	10					10
OFFSITE COVERAGE						229					229											185
COVERAGE TO BE PURCHASED PER TRPA 30.4-2																						130

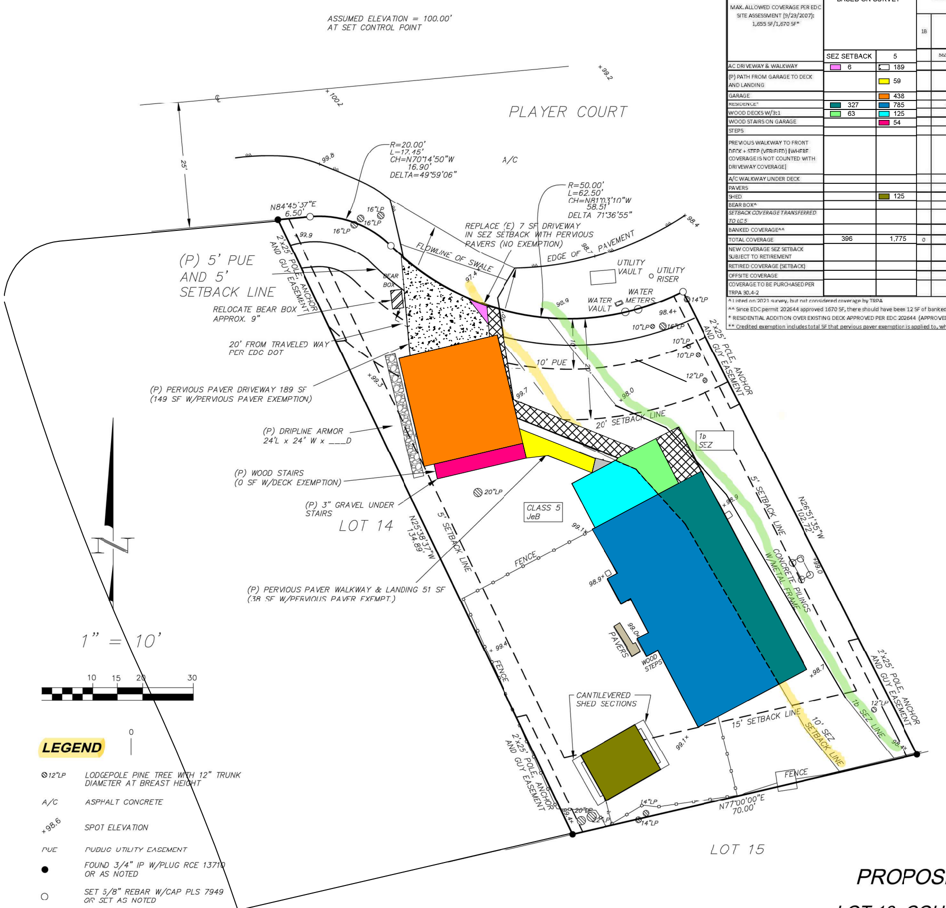
^ Listed on 2021 survey, but not considered coverage by TRPA

^^ Since EDC permit 202644 approved 1670 SF, there should have been 12 SF of banked LC5 coverage.

* RESIDENTIAL ADDITION OVER EXISTING DECK APPROVED PER EDC 202644 (APPROVED 192 SF ADDITION TO BE CONSTRUCTED OVER EXISTING 177 SF DECK); VERIFIED COVERAGE + 15 SF = 1,670 SF

** Credited exemption includes total SF that pervious paver exemption is applied to, which is used by TRPA to calculate the max. allowed exemptions. Actual exemption is the amount of coverage that is exempted.

DRIVEWAY/ WALKWAY AREA BEING REMOVED



PROPOSED VARIANCE SITE PLAN

LOT 13, COUNTRY CLUB HEIGHTS UNIT NO. 6

V23-0001/Atkins
Exhibit E - Updated Proposed Plans

A 3:1 HEIGHT REDUCTION WAS USED IN THE COVERAGE CALCULATIONS FOR THE DECK, STEPS, SHED AND BEAR BOX. THE 3 SQ. FT. OF A/C UNDER THE DECK THAT WAS USED IN THE COVERAGE CALCULATIONS IS UNDER THAT PORTION OF THE DECK THAT WAS NOT COUNTED DUE TO THE HEIGHT REDUCTION.

LAND AREA

7572 SQUARE FEET

NOTES

LAND CAPABILITY INFORMATION OBTAINED FROM MAP STAMPED "LAND CAPABILITY VERIFICATION FILE LCAP2022-0067, SIGNED BY JULIE ROLL, DATED 07/28/2022.

PLAYER CT.

1627 PLAYER COURT
SOUTH LAKE TAHOE, CA 96150

Todd B. SPIEGEL architects
31822 Village Center Road #202
Westlake Village, CA 818.879.6175

SEALS AND SIGNATURES

LICENSED ARCHITECT TODD B. SPIEGEL C-30855 STATE OF CALIFORNIA

ISSUED FOR	REV	DATE
ISSUED		XX/XX/XX

KEY PLAN

PROJECT NORTH

DRAWING TITLE
SQUARE FOOTAGE CALCULATIONS

SCALE

PROJECT NUMBER 2319

PLOT DATE 4/5/2024 11:55:16 AM

DRAWING # A2.0

MAX. ALLOWED COVERAGE PER SITE ASSESSMENT (9/23/2021): 1,655 SF/1,670 SF*	SQUARE FOOTAGE BASED ON SURVEY		VERIFIED/APPROVED COVERAGE BY LAND CLASS BASED ON LCAP2022-0067				APPROVED COVERAGE BY LAND CLASS AFTER EDC PERMIT 202644				EXISTING COVERAGE PER JULY 2022 INSITE SURVEY	EXISTING COVERAGE JULY 2022 BY LAND TYPE				PROPOSED COVERAGE BEFORE EXEMPTIONS				COVERAGE EXEMPTIONS		PROPOSED COVERAGE
			1B	LC 5			1B	LC 5			1B	LC 5			1B	LC 5			Actual exemption	Credited Exemption**	
	SEZ SETBACK	5		SEZ SETBACK	5	TOTAL LC 5		SEZ SETBACK	5	TOTAL LC 5			NO SETBACK	5	TOTAL LC 5	SEZ SETBACK	5	TOTAL LC 5	(Max. allowed: 627 sq)	(Max. Allowed: 627 sq)	TOTAL
AC DRIVEWAY & WALKWAY	6	469		78	483	561		78	483	561		519		78	441	519	7	182	189	46	189	144
(P) PATH FROM GARAGE TO DECK AND LANDING		60																59	59	15	59	44
GARAGE		438																440	440			440
RESIDENCE*	327	785		320	764	1,084		319	764	1,083		1,083		319	764	1,083	319	764	1,083			1,083
WOOD DECKS W/5:1	63	125										218	3	100	115	218	60	115	175	115	115	60
WOOD STAIRS ON GARAGE		54																54	54	54	54	0
STEPS				4	9	13		6	19	25		14		5	9	14			9	9	9	0
PREVIOUS WALKWAY TO FRONT DECK + STEP (VERIFIED) (WHIRE COVERAGE IS NOT COUNTED WITH DRIVEWAY COVERAGE)								49														
A/C WALKWAY UNDER DECK												3		3		3	0		0			0
PAVERS												9			9	9	0		0			0
SHED		125										137			137	137		137	137	120	120	17
BEAR BOX*												5			5	5		0	0			0
SETBACK COVERAGE TRANSFERRED TO LC 5																	4					
BANKED COVERAGE**						12											2					2
TOTAL COVERAGE	396	2,076	0	402	1,256	1,658	0	452	1,266	1,718	1,988	1,988	3	505	1,480	1,988	392	1,751	2,146	358	546	1,790
NEW COVERAGE SEZ SETBAC: SUBJECT TO RETIREMENT																	20					
RETIRED COVERAGE (SETBAC)																	10					10
OFFSITE COVERAGE						229						229										185
COVERAGE TO BE PURCHASED PER TRPA 30.4.2*																						130

* Listed on 2021 survey, but ot considered coverage by TRPA.
** Since EDC permit 202644 approved 1670 SF, there should have been 57 SF of banked LCS coverage.
* Residential addition over existing deck approved per EDC 202644 (approved 192 SF addition to be constructed over 177 SF deck (3:1). TOTAL COVERAGE = VERIFIED COVERAGE (1,655 SF) + 115F = 1,670 SF
** Credited exemption inclues total SF that pervious paver exemption is applied to, which is used by TRPA to calculate the max. allowed exemptions. actual exemption is the amount of coverage that is exempted
* Coverage allowed per EDC permit 202644: 1,670 SF. Allowable with purchase and transfer per TRPA Code section 30.4.2: 1,800 SF. Proposed coverage after retiring 10 SF for SEZ setback relocation: 1,790 SF.

TOTAL WITH PERVIOUS PAVER EXEMPTION: 1,938

DRIVEWAY/ WALKWAY AREA BEING REMOVED

LEGEND

⊘12"LP	LODGEPOLE PINE TREE WITH 12" TRUNK DIAMETER AT BREAST HEIGHT
A/C	ASPHALT CONCRETE
+98.6	SPOT ELEVATION
PUE	PUBLIC UTILITY EASEMENT
●	FOUND 3/4" IP W/PLUG RCE 13710 OR AS NOTED
○	SET 5/8" REBAR W/CAP PLS 7949 OR SET AS NOTED

PROPOSED VARIANCE SITE PLAN

LOT 13, COUNTRY CLUB HEIGHTS UNIT NO. 6

A 3:1 HEIGHT REDUCTION WAS USED IN THE COVERAGE CALCULATIONS FOR THE DECK, STEPS, SHED AND BEAR BOX. THE 3 SQ. FT. OF A/C UNDER THE DECK THAT WAS USED IN THE COVERAGE CALCULATIONS IS UNDER THAT PORTION OF THE DECK THAT WAS NOT COUNTED DUE TO THE HEIGHT REDUCTION.

LAND AREA

7572 SQUARE FEET

NOTES

LAND CAPABILITY INFORMATION OBTAINED FROM MAP STAMPED 'LAND CAPABILITY VERIFICATION FILE LCAP2022-0067, SIGNED BY JULIE ROLL, DATED 07/28/2022.

PLAYER CT.

1627 PLAYER COURT
SOUTH LAKE TAHOE, CA 96150

Todd B. SPIEGEL architects
31822 Village Center Road #202
Westlake Village, CA 818.879.6175

SEALS AND SIGNATURES

LICENSED ARCHITECT TODD B. SPIEGEL C-30855 RENEWAL 08/31/2023 STATE OF CALIFORNIA

ISSUED FOR	RE V	DATE
ISSUED		XX/XX/XX

KEY PLAN

PROJECT NORTH

DRAWING TITLE
SQUARE FOOTAGE CALCULATIONS

SCALE

PROJECT NUMBER 2319

PLOT DATE 4/2/2024 5:01:46 PM

A2.1

DRAWING #

EXHIBIT 3

R G S E Inc. Structural Engineers
2720 Cochran St. Suite 8B, Simi Valley, CA 93065
(805) 522-3379 www.rgseinc.com

March 27, 2024

Michael N. Friedman
HIRSCHBERG & FRIEDMAN, LLP
4500 Park Granada, Suite 202
Calabasas, California 91302-1613

Project: Proposed ADU at 1627 Player Court, South Lake Tahoe
Project No.: 24124H

Dear Michael,
Per your request, on December 27, 2024, I reviewed a photo and drawing in PDF form by William Rose, dated 6/7/2023 for a proposed Garage/ADU at 1627 Player Court, South Lake Tahoe, CA. We only reviewed those items emailed to us. We did not perform any in person viewings of the existing property.

Our services have been performed to the degree of care and skill ordinarily practiced under similar circumstances by professional engineers providing similar services in this locality. No other warranty, expressed or implied, is made regarding the professional advice or opinions provided in this letter.

Opinions:

1. The roof of the proposed garage/ADU, slopes in one direction towards, and located near the neighbor's property at 1625 Player Court. Snow is intended to slide off, and can land a substantial distance from the roof edge.
2. There does not appear to be any consideration made for drainage of the additional snow that would be caused by the proposed garage ADU.
3. Because the building location, and roof configuration of the proposed garage/ADU, there is a potential for substantial, and even excessive snow mounds on the neighbor's property at 1625 Player Court.
4. With additional snow melt, and potentially low drainage on the neighbor's property, there is the potential of ponding of water, and subsequently over saturation of the soils. When some types of soils get oversaturated below footings, they can experience additional differential settlement. Excessive differential settlement can manifest itself in cracks in footings, and architectural finishes, and if the differential settlement is large enough over a short horizontal distance, could affect the structural performance of the building.

Recommendations:

1. Thorough analysis should be performed by an experienced licensed engineers for the changes in snow drift, snow loads that slide off the roof, and proper drainage of the snow melts that affect the neighbor's property at 1625 Player Court.

Respectfully submitted,

Ramon Garcia

Ramon Garcia
President
Structural Engineer no.4595

EXHIBIT 4

Todd B.
SPIEGEL
architects
699 Hampshire Road Suite #218
Westlake Village, CA 818.879.6175

March 5, 2024

Michael N. Friedman, Esq
Hirschberg & Friedman. LLP
4500 Park Granada, Suite 202
Calabasas, California 91302

Project: Proposed ADU at player Court, South Lake Tahoe
Project No: 24124H

Michael,

Per your request, I have reviewed the documents and photographs you provided of the proposed Garage/ADU project and related variance for 1627 Player Court, South Lake Tahoe to assess the architectural impact to the neighboring property (aka Lee Residence) and conformance to applicable jurisdictional Planning and Building Code requirements.

Note that my provided responses to your request have been performed to the standard degree of care and skill customarily provided by professional architects providing similar services. No warranty, expressed or implied, is made regarding the professional advice or opinions provided in this response.

Summary:

Being a licensed Architect and General Contractor in the State of California and familiar with projects in the El Dorado County locale, it was requested that I review and provide my professional opinion regarding the design impact of the proposed 2-story Garage/ADU on the neighboring property located at 1625 Player Court, and also conduct a general conformance analysis of the local and regional Planning codes as it relates to this project and the variance which was granted by County of El Dorado Planning & Building Department to allow for a 15’ encroachment into to the prescribed 20’ Front Yard setback.

Based on my professional opinion for 25+ years of experience, I believe this project will have a significant detrimental impact on the neighboring property due to its proposed location, height, and drainage impediment. It is also my opinion that there are feasible and preferable alternative design solutions that would greatly reduce this impact and still provide reasonable use of the subject lot similar to surrounding properties.

Opinions:

Item #1 Location

Due to the geometry of the cul-de-sac at these neighboring properties, locating the proposed 2-story structure 15’ into the 20’ Front Yard Setback, positions the proposed Garage/ADU structure immediately adjacent to the Lee’s existing residence. This will create several detrimental conditions for the Lees. Privacy will likely be severely impacted due to the close proximity of the 2nd story living space having a direct line-of-sight condition. Even if the West façade windows at the new ADU were eliminated, the ADU’s access stairway and anticipated noise and lighting would still be considered intrusive and negatively impact the neighbor’s quiet enjoyment of their property.

Item #2 Height

The 26'-10" overall 2-story height of the proposed structure is a major subject of contention. As the structure is located in the prescribed Front Yard Setback and is significantly taller than a single-story free-standing garage would be, the structure negatively impacts the neighboring house by creating a significant barrier to views and creates a majorly intrusive visual element to the neighbor and the entire streetscape. This is evident from the renderings created by this office to reflect the three-dimensional conditions more accurately. The open, natural aesthetic enjoyed by the community-at-large is a valued characteristic of living in the area which is seriously compromised with the current design. Generally, Front Yard setbacks are provided to maintain a uniform and shared common relief from this exact type of intrusive massing. The 10' -1" plate height of the proposed Garage is 2' higher than required. In addition, the 4:12 roof slope, although common for snow locations, is not mandatory or required. There are numerous examples of low-pitch and even flat-roof designs throughout the Tahoe Basin which if utilized, would provide some relief to the neighboring property.

Item #3 Increase to Living Space

Related to Item #2 Height above, the 2nd story, which creates this significant negative impact on the neighboring property, is intended to provide additional living space to the subject property. The existing residence currently has 4 bedrooms totaling approximately 1,639sf. As such the property already enjoys ample residential use. There appears to be no exceptional conditions or circumstances that require the granting of a variance for non-conforming additional residential use. Residential activity is a higher intensity use than a garage and it is unclear why the Planning Department allowed what are essentially two separate occupancy uses to be combined into the approved variance which only addresses the need for the Garage in the Staff Report.

Item #3 Drainage

Based on the topographical survey drawing provided, it appears the natural flow of surface drainage is from West to East (i.e. from the front property of 1625 Player Court to the SEZ area located at the Eastern edge of 1627 Player Court). As such, the location of the Garage/ADU in its proposed location will likely obstruct the natural drainage flow, creating the potential for water ponding and an increase in subsurface water infiltration in close proximity to the Lee's existing residence. As designed, the proposed roof slope would shed a significant amount of snow towards the side property line, likely causing a build-up adjacent to, or possibly against, the Eastern exterior wall of the Lee's residence. Access to utilities such as the gas meter shut-off would have an increased risk of becoming inaccessible. The additional snow would also result in increased subsurface water infiltration. There is no indication of any drainage system designed to collect and remove the increased subsurface water expected to accumulate in this area. Such a drainage system would be required to prevent a damaging impact, including but not limited to settlement and possible failure of the concrete load bearing spread footing foundation system. Similar summary findings by RGSE Structural Engineers mirrors this concern.

Item #4 Lot Coverage

Allowable Lot Coverage is a significant factor in determining the potential development of properties located in the Tahoe Regional Planning Agency jurisdiction. It has been indicated in the proposed Site Plan prepared by William Rose that the TRPA's allowable Lot Coverage is 1,800sf. The proposed total Lot Coverage, with the ADU/Garage located in the Front Setback, was calculated by Rose to be 1,790sf. According to the Staff Report, it was determined that there exist no alternative locations for the Garage/ADU without exceeding the maximum Lot Coverage allowance. It is confirmed by this office that moving the structure further from the street, out of the Front Yard setback, will cause an increased driveway coverage exceeding the allowable Lot Coverage by approximately 295sf.

However, this assumes that there is no reduction of Lot Coverage in other areas such as with the removal of the Storage Shed (137sf) or wood decks (175sf). Thus, it appears that a code conforming design solution exists without the need for a variance if the Garage area is prioritized above non-essential accessory uses.

Additionally, the submission and granting of the application for a variance seeking relief from the prescribed Front Yard Setback in lieu of a variance seeking relief from the allowable Lot Coverage area creates, in this office's opinion, a significantly greater negative impact to the surrounding property owners and the neighborhood. In reviewing the local Planning code and the TRPA guidelines, similar standards exist for both types of variances. Following its own mandate, the Planning Department could promote the less impactful, less harmful of these two possible variance options.

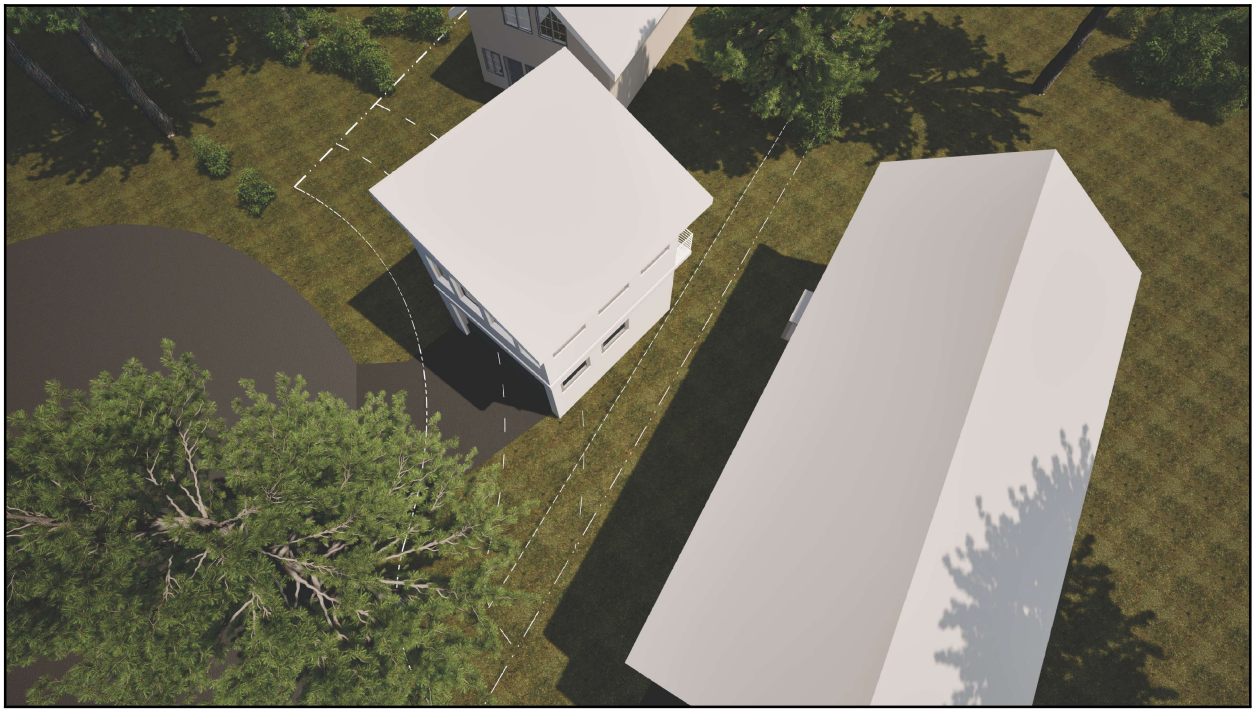
Conclusion

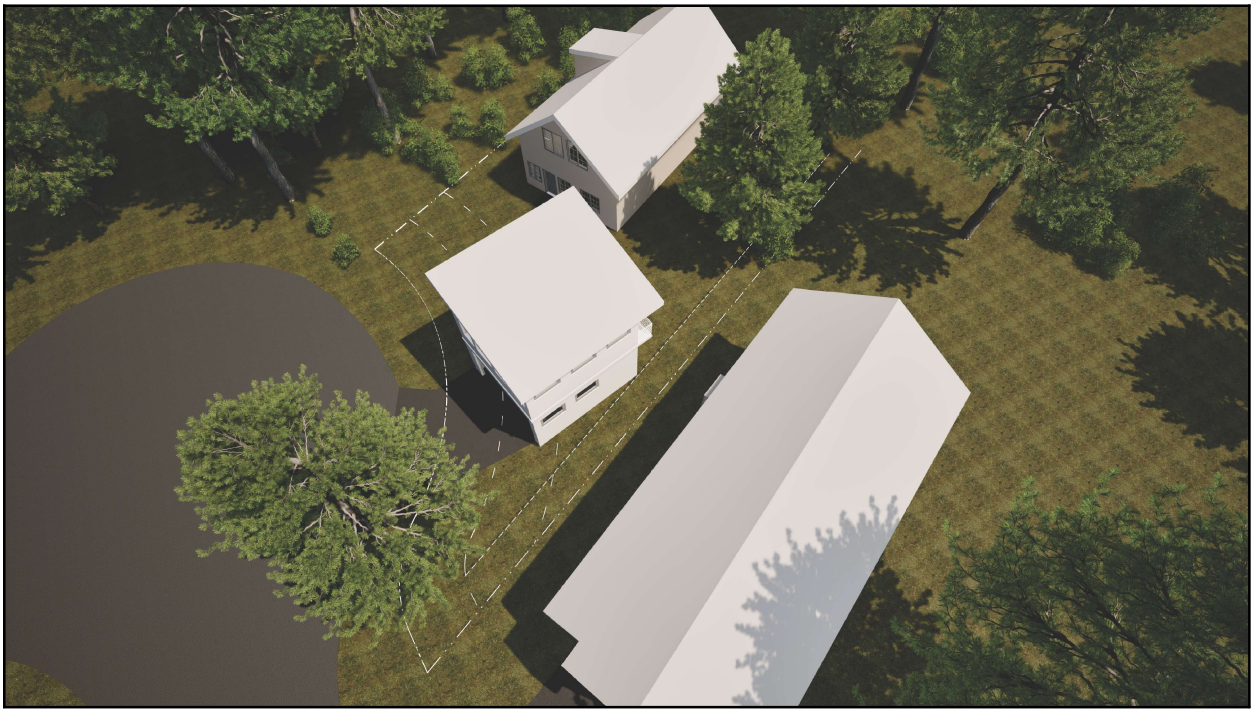
Architectural design and site planning standards favor solutions that are both thoughtfully resolved and respectful to the natural landscape and the community. The applicant's request to construct an enclosed Garage structure is a legitimate and understandable desire. As described above, viable alternative design solutions in lieu of the current proposal do exist. In this office's opinion, the current location and height of the project is not in keeping with commonly practiced aesthetic and safety considerations of the adjacent property owners. Furthermore, the inclusion of the 2nd story ADU portion of the structure as part of the approved variance appears entirely in conflict with the intent of applicable planning codes and arguably not even eligible for the issuance of a variance allowing for encroachment in the Front Setback based on the Planning Departments own guidelines.

Respectfully submitted,

Todd B. Spiegel, AIA
President
SPIEGEL/architects
CONSERT/builders

EXHIBIT 5





Video of 3-D Rendering of Proposed Development

(Provided on a Flash Drive to Staff)

EXHIBIT 6